

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CARLA CAIN

(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.
30 EAST BUTLER PIKE, AMBLER, PA 19002
PHONE: (215) 540-8888 EXT. 116

DEFENDANTS

PORTFOLIO RECOVERY ASSOCIATES, LLC, a wholly-owned subsidiary of
PORTFOLIO RECOVERY ASSOCIATES, INC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage		<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other	<input type="checkbox"/> Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		
FEDERAL TAX SUITS				
		<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party	<input type="checkbox"/> 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District	<input type="checkbox"/> 6 Multidistrict Litigation (specify)
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.Brief description of cause:
FAIR DEBT COLLECTION PRACTICES ACT

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND S

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/13/2015

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFF

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 833 East Dorsett Street, Philadelphia, PA 19119

Address of Defendant: 120 Corporate Boulevard, Norfolk, VA 23502

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations
- Civil Rights
- Habeas Corpus
- Securities Act(s) Cases
- Social Security Review Cases

11. All other Federal Question Cases

(Please specify) 15 U.S.C. § 1692 et seq.

B. *Diversity Jurisdiction Cases:*

- Insurance Contract and Other Contracts
- Airplane Personal Injury
- Assault, Defamation
- Marine Personal Injury
- Motor Vehicle Personal Injury
- Other Personal Injury (Please specify)
- Products Liability
- Products Liability — Asbestos
- All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL,

counsel of record do hereby certify:

- Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 10-13-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10-13-15

Attorney-at-Law

57100

Attorney I.D.#

CIV. 609 (5/2012)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

CIVIL ACTION

CARLA CAIN

v.

PORTFOLIO RECOVERY ASSOCIATES
LLC

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (x)

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. ()

10-13-15
Date

Attorney-at-law

Plaintiff, Carla Cain
Attorney for

215-540-8888 x 116

877-788-2864

kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

CARLA CAIN,)
Plaintiff)
v.)
Case No.:)
PORTFOLIO RECOVERY)
ASSOCIATES, LLC, a wholly-owned)
subsidiary of PORTFOLIO)
RECOVERY ASSOCIATES, INC.,)
Defendant)
COMPLAINT AND DEMAND FOR
JURY TRIAL
(Unlawful Debt Collection Practices)

COMPLAINT

CARLA CAIN (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against PORTFOLIO RECOVERY ASSOCIATES, LLC, a wholly-owned subsidiary of PORTFOLIO RECOVERY ASSOCIATES, INC. (“Defendant”):

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United

1 States district court without regard to the amount in controversy," and 28 U.S.C. §
2 1331, which grants this court original jurisdiction of all civil actions arising under
3 the laws of the United States.

4 3. Defendant conducts business in the Commonwealth of Pennsylvania;
5 therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7 **PARTIES**

8 5. Plaintiff is a natural person residing in Philadelphia, Pennsylvania.

9 6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. §
10 1692a(3).

11 7. In the alternative, Plaintiff is a person granted a cause of action
12 under the FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S.
13 Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

14 8. Defendant is a corporation with its principal place of business
15 located at: 120 Corporate Boulevard in Norfolk, Virginia, 23502.

16 9. At all times material hereto, Defendant acted as a "debt collector"
17 within the meaning of 15 U.S.C. § 1692(a)(6), and attempted to collect a "debt" as
18 defined by 15 U.S.C. § 1692(a)(5).

19 10. Portfolio Recovery Associates, Inc., through its wholly-owned
20 subsidiary, Portfolio Recovery Associates, LLC, purchases, manages and collects
21

1 debts.

2 11. Defendant acted through its agents, employees, officers, members,
3 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
4 representatives, and insurers.

5 **FACTUAL ALLEGATIONS**

6 12. At all relevant times herein, Defendant was attempting to collect an
7 alleged consumer debt and contacted Plaintiff in its attempts to collect that debt.

8 13. Plaintiff never incurred any debt in connection with a business or
9 commercial activities, and therefore, the debt if truly an obligation owed by her,
10 could have only arisen from financial obligations primarily for personal, family,
11 or household purposes.

12 14. Between January 2015 and July 2015, Defendant continuously and
13 repeatedly contacted Plaintiff on her cellular telephone in its attempts to collect a
14 consumer debt.

15 15. Frustrated by the repeated calls and lack of information, Plaintiff told
16 Defendant to stop calling her in late January 2015.

17 16. In response, Defendant's collector told Plaintiff, "We'll take you off
18 the calling list".

19 17. Despite Plaintiff's request and its statement to take her off the calling
20 list, Defendant continued to call Plaintiff.

1 18. Each time Plaintiff answered Defendant's calls, she told them to stop
2 calling her.

3 19. During one conversation, Defendant got angry at Plaintiff and told
4 her "this is your damn debt!"

5 20. Further, Defendant attempted to intimidate and humiliate Plaintiff by
6 demeaning her with words implying that non-payment was disgraceful.

7 21. Also, Defendant threatened to garnish Plaintiff's wages.

8 22. In Pennsylvania, a person's wages cannot be garnished to satisfy a
9 debt.

10 23. Therefore, not only did Defendant not intend to take the action it
11 threatened, but it legally could not take the threatened action.

12 24. In addition, Defendant would call Plaintiff at times when it was
13 inconvenient for her to receive collection calls.

14 25. Specifically, Defendant would call Plaintiff before 8:00 a.m. and
15 after 9:00 p.m.

16 26. Most recently, on July 30, 2015, Defendant called Plaintiff eight (8)
17 times on her cellular telephone.

18 27. Once Defendant was aware that its calls were unwanted, there was no
19 purpose for further calls, other than harassment.

28. Defendant's actions as described herein were taken with the intent to abuse, harass, and deceive Plaintiff.

29. Defendant failed to properly validate the alleged debt within 5 days after the initial communication by sending the Plaintiff written notice containing the amount of debt, name of creditor, a statement that unless the Plaintiff within thirty days after receipt of the notice, disputes the validity of the debt that the debt will be assumed to be valid, that the debt collector will obtain verification of the debt or inform Plaintiff of her rights to request within thirty days, provide her with the name and address of the original creditor.

COUNT I

30. A debt collector violates § 1692c(a)(1) of the FDCPA by communicating with a consumer in connection with the collection of any debt at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m., local time at the consumer's location.

31. Here, Defendant violated § 1692c(a)(1) of the FDCPA when it called Plaintiff before 8:00 a.m. and after 9:00 p.m.

COUNT II

DEFENDANT VIOLATED §§ 1692d and 1692d(5) OF THE FDCPA

32. A debt collector violates § 1692d by engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

33. A debt collector violates § 1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

34. Defendant violated §§ 1692d and 1692d(5) when it placed repeated harassing telephone calls to Plaintiff's telephone number and continued to call Plaintiff after being told to stop calling.

COUNT III

DEFENDANT VIOLATED §§ 1692e, e(5) and 1692e(10) OF THE FDCPA

35. A debt collector violates § 1692e by using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

36. A debt collector violates § 1692e(5) of the FDCPA by threatening to take any action that cannot legally be taken or has not intention of being taken.

37. A debt collector violates § 1692e(10) by using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

38. Here, Defendant violated §§ 1692e, 1692e(5), and 1692e(10) of the FDCPA by threatening to take legal action against Plaintiff as well as threatening to garnish Plaintiff's when it had no intention of doing so and did not have the legal authority to do so.

COUNT IV

DEFENDANT VIOLATED §1692f OF THE FDCPA

39. A debt collector violates § 1692f by using unfair or unconscionable means to collect or attempt to collect any debt.

40. Defendant violated § 1692f when it failed to update its records to cease all calls to the cell phone as well as made demeaning remarks to Plaintiff, including telling her that it was her, “damn debt.”

COUNT V
DEFENDANT VIOLATED §§1692g(a) OF THE FDCPA

41. A debt collector violates § 1692g(a) if within five days after the initial communication with a consumer, the debt collector fails to send the consumer a written notice containing (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will

1 obtain verification of the debt or a copy of a judgment against the consumer and a
2 copy of such verification or judgment will be mailed to the consumer by the debt
3 collector; and (5) a statement that, upon the consumer's written request within the
4 thirty-day period, the debt collector will provide the consumer with the name and
5 address of the original creditor, if different from the current creditor.
6

7 43. Here, Defendant violated § 1692g(a) by failing to send written
8 notification, within five (5) days after its initial communication with Plaintiff,
9 advising her of her rights to dispute the debt or request verification of the debt.
10

11 WHEREFORE, Plaintiff, CARLA CAIN, respectfully prays for judgment
12 as follows:

13 a. All actual damages suffered pursuant to 15 U.S.C. §
14 1692k(a)(1);
15
16 b. Statutory damages of \$1,000.00 for the violation of the
17 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
18
19 c. All reasonable attorneys' fees, witness fees, court costs and
20 other litigation costs, pursuant to 15 U.S.C. § 1693k(a)(3); and
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22 d. Any other relief deemed fair and proper by this Honorable
23 Court.
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1
DEMAND FOR JURY TRIAL

2 PLEASE TAKE NOTICE that Plaintiff, CARLA CAIN, demands a jury
3 trial in this case.
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RESPECTFULLY SUBMITTED,

DATE: 10-14-15 KIMMEL & SILVERMAN, P.C.

By: _____
CRAIG THOR KIMMEL
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 East Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888 ext. 148
Facsimile (877) 788-2864
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